

Letter of Findings Number: 03-20120661P
Withholding Tax
For Tax Year 2012

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ISSUE

I. Tax Administration - Ten-Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1(a)(4); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer asks that the Department exercise its authority to abate the ten-percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana business which provides roll-off boxes for removal of solid waste within the state. Taxpayer's withholding returns, form WH-1, were not timely and payment was remitted late for two (2) tax periods at issue. The Department of Revenue (Department) imposed a statutory ten (10) percent penalty for failing to timely remit a tax held in trust for the state on both tax periods. Taxpayer disagreed with the imposition of the penalty and submitted a protest to that effect. An administrative hearing was conducted, during which Taxpayer's representative explained the basis for the protest. On the basis of the hearing and information provided to the Department, this Letter of Findings results.

I. Tax Administration - Ten-Percent Negligence Penalty.

DISCUSSION

Taxpayer believes that it is entitled to abatement of the ten-percent negligence penalty because of "all the changes in taxes [sic] file diff[erent] times." However, Taxpayer has filed and remitted withholding taxes on a monthly basis for "over twenty years."

IC § 6-8.1-10-2.1(a)(4) states that a ten (10) percent penalty be imposed if a taxpayer "fails to timely remit any tax held in trust for the state."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to... timely remit tax held in trust... was due to reasonable cause and not due to willful neglect, the department shall waive the penalty."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including the negligence penalty – is presumptively valid.

At hearing, Taxpayer could not provide any specific changes in state law governing collecting and remitting taxes withheld from employees that gave rise to these two late filings. In fact, Taxpayer admitted that an identical issue occurred before and which was resolved with aid of the Department, yet Taxpayer subsequently failed again to timely remit the taxes held in trust taxes for the two periods at issue. In addition, Taxpayer admits that it had remitted taxes withheld from employees on a monthly basis for many years.

FINDING

Taxpayer's protest is denied.

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